



**BILLING CODE: 4410-09-P**

**DEPARTMENT OF JUSTICE  
Drug Enforcement Administration**

**Docket No. 13-13  
Pawan Kumar Jain, M.D.  
Decision And Order**

On February 12, 2013, Administrative Law Judge (ALJ) Gail A. Randall issued the attached recommended decision. Neither party filed exceptions to the decision. Having reviewed the entire record, I have decided to adopt the ALJ's rulings, findings of fact, conclusions of law, and recommended Order.

**ORDER**

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration BJ5128067, issued to Pawan Kumar Jain, M.D., be, and it hereby is, revoked. I further order that any pending application of Pawan Kumar Jain, M.D., to renew or modify his registration, be, and it hereby is, denied. This Order is effective immediately.

Date: March 21, 2013

Michele M. Leonhart  
Administrator

Dedra S. Curteman, Esq., for the Government  
Jeffrey C. Grass, Esq., for the Respondent

**RECOMMENDED RULINGS, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND  
DECISION OF THE ADMINISTRATIVE LAW JUDGE**

**I. FACTS**

Gail A. Randall, Administrative Law Judge. The Deputy Assistant Administrator, Drug Enforcement Administration (“DEA” or “Government”), issued an Order to Show Cause (“Order”) dated December 13, 2012,<sup>1</sup> proposing to revoke the DEA Certificate of Registration, Number BJ5128067, of Pawan Kumar Jain, M.D., (“Dr. Jain” or “Respondent”), as a practitioner, pursuant to 21 U.S.C. 824(a)(3)-(4) (2006), and deny any pending applications for renewal or modification of such registration because the Respondent does “not have authority to practice medicine or handle controlled substances in the State of New Mexico” and Respondent’s “continued registration is inconsistent with the public interest.” [Order at 1].

Specifically, the Order alleged that the New Mexico State Medical Board took action against the Respondent on June 28, 2012. [Id.]. The Order further alleged that as a result of the action by the New Mexico State Medical Board, the Respondent is without authority to handle controlled substances in the state of New Mexico, the state in which the Respondent is registered with the DEA. [Id.] Thus, the DEA must revoke Respondent’s DEA registration based on his lack of authority to handle controlled substances in the state of New Mexico. [Id.]. Additionally, the Order alleged that on April 3, 2012, during the execution of a federal search warrant, DEA personnel located controlled substances and prescription bottles at the Respondent’s premises after the Respondent had previously stated on February 22, 2012, that he “did not order controlled substances for dispensing or administering at [his] registered location”

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<sup>1</sup> The Order to Show Cause was served on the Respondent on December 17, 2012. See Government’s Notice of Service.

nor did he maintain controlled substances on his premises. [Id. at 1-2]. In relation to this allegation, the Order asserted that the Respondent did not maintain an inventory log for the controlled substances located at his registered location and thus, he violated 21 CFR 1304.11(a). Lastly, the Order alleged that from June 2008 through September 2011 at least twenty-one of the Respondent's patients died as a result of 'multiple drug toxicity.' [Id. at 2]. Moreover, the Order alleged that a medical expert reviewed ten of the Respondent's patient records, seven of which were deceased patients, and determined that the Respondent's care deviated from the standard of care, and in some cases resulted in the death of the Respondent's patients. [Id.]. In relation to this allegation, the Order stated that the Respondent provided strong and dangerous controlled substances to patients who posed a risk of diversion, the Respondent post-dated prescriptions, the Respondent failed to properly complete prescriptions, and the Respondent did not issue prescriptions for a legitimate medical purpose in the usual course of professional practice. [Id.].

On January 16, 2013, the Respondent, through counsel, filed a request for a hearing in the above-captioned matter. Concurrently with his request for hearing, Respondent filed a Motion for Stay of the Order to Show Cause Hearing ("Respondent's Motion"). Therein, Respondent moved to stay the scheduled hearing in this matter pending the resolution of Respondent's "Petition for Judicial Review of the New Mexico State Medical Board's revocation of his medical license." [Respondent's Motion at 1]. Respondent argued that a stay of the administrative hearing will not harm the public interest because Dr. Jain is currently unable to handle controlled substances. [Id.].

On January 22, 2013, the Court issued an Order directing the Government to respond to Respondent's Request for Hearing and Motion for Stay of the Hearing on or before January 29, 2013.

On January 28, 2013, the Government filed its Motion for Summary Disposition and Response to Respondent's Request for Hearing and Motion for Stay of the Hearing (Government's Motion").<sup>2</sup> Therein, the Government opposed the Respondent's Motion for Stay of the Hearing and moved this Court to summarily dismiss the above-captioned matter. [Government's Motion at 1].

The Government argued that summary disposition is warranted in this case because the Respondent currently lacks authority to handle controlled substances in the State of New Mexico and thus lacks authority to possess a DEA registration. [*Id.* at 2-3]. The Government attached to its motion, a Decision and Order from the New Mexico Medical Board, dated December 17, 2012, in which the New Mexico Medical Board revoked the Respondent's medical license.<sup>3</sup> [*Id.* at Exhibit C]. The Government argues, therefore, that in accordance with Agency precedent, the DEA is barred by statute from continuing the Respondent's registration because his state medical license has been revoked. [*Id.* at 2-3]. In addition, the Government argues that summary disposition is appropriate even though the Respondent intends to contest the New Mexico Board's decision to revoke his authority to practice medicine or handle controlled substances in the state of New Mexico. [*Id.* at 3-5]. The Government argues that summary disposition is warranted, even though the Respondent's privileges may be reinstated at a later date, because Agency precedent allows for the revocation of a registrant's registration when a state license has been suspended. [*Id.*]. Therefore, the Government requested that this Court grant its Motion for

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<sup>2</sup> Government concurrently filed its Notice of Service, which stated that the December 13, 2012 Order to Show Cause was served on Respondent on December 17, 2012 by DEA investigators. See Government's Notice of Service. Thus, the Respondent's January 16, 2013 Request for Hearing was timely filed. See 21 CFR 1301.43(a) (2012).

<sup>3</sup> In addition, the Government provided a June 28, 2012 Summary Suspension Order of the Respondent's New Mexico license to practice as a "physician assistant" [*sic*] from the New Mexico Medical Board, see Government Motion at Exh. A, a July 6, 2012 Amended Summary Suspension Order of the Respondent's New Mexico license to practice as a physician from the New Mexico Medical Board, see Government Motion at Exh. B, and a November 5, 2012 Hearing Officers Report from the New Mexico Medical Board, see Government Motion at Exh. D.

Summary Disposition and recommend that the Respondent's DEA registration be revoked because the Respondent lacks state authority to handle controlled substances. [*Id.* at 5]. In addition, the Government requested that this Court deny Respondent's Motion for Stay of the Hearing. [*Id.*].

On January 29, 2013, the Court issued an Order directing the Respondent to respond to Government's Motion for Summary Disposition on or before February 5, 2013. The Respondent failed to respond to the Government's Motion for Summary Disposition by the Court's set date of February 5, 2013.

For the reasons set forth below, I will grant the Government's Motion and recommend that the Administrator revoke the Respondent's DEA Certificate of Registration. But, I note that, pursuant to 21 CFR1301.13(a) (2012), the Respondent may apply for a new DEA Certificate of Registration at any time.

I will also deny the Respondent's Motion for a Stay.

## **II. DISCUSSION**

### **A. Respondent Currently Lacks Authority To Handle Controlled Substances In New Mexico.**

The DEA will not maintain a controlled substances registration if the registrant is without state authority to handle controlled substances in the state in which the registrant practices. The Controlled Substances Act ("CSA") provides that obtaining a DEA registration is conditional on holding a state license to handle controlled substances. *See* 21 U.S.C. 802(21) (2006) (defining "practitioner" as "a physician . . . licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . to distribute, dispense, [or] administer . . . a controlled substance in the course of professional practice"); 21 U.S.C. 823(f) (2006) ("the Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled

substances under the laws of the State in which he practices”). The DEA, therefore, has consistently held that the CSA requires the DEA to revoke the registration of a practitioner who no longer possesses a state license to handle controlled substances. See 21 U.S.C. 824(a)(3) (2006) (stating “a registration may be suspended or revoked by the Attorney General upon a finding that the registrant has had his State license or registration suspended, revoked or denied by competent State authority”); Beverley P. Edwards, M.D., 75 FR 49,991 (DEA 2010); Joseph Baumstarck, M.D., 74 FR 17,525 (DEA 2009).

In this case, the Government has provided adequate documentation that the Respondent’s New Mexico medical license was suspended on July 6, 2012, and further revoked on December 17, 2012. See Government’s Motion at Exh. B and C. Furthermore, although the Respondent failed to file a response to the Government’s Motion for Summary Disposition, the Respondent admitted in his January 16, 2013 Request for Hearing that “Dr. Jain does not have authority to practice medicine or handle controlled substances in the State of New Mexico.” [Respondent’s Request for Hearing at 1]. Although the Respondent is seeking review of the New Mexico Medical Board’s decision to revoke his medical license,<sup>4</sup> this is not a sufficient reason to stay these proceedings. The law is clear that when the Respondent is without state authority to practice medicine, his DEA registration must be revoked. See 21 U.S.C. 824(a)(3); Edwards, 75 FR 49,991; Baumstarck, 74 FR 17,525.

Although it is not disputed that the Respondent currently lacks state authority to practice medicine and handle controlled substances, the Respondent contends that his continued DEA registration is within the public interest. See Respondent’s Request for Hearing at 2-4.

Respondent argues that even though his state medical license has been revoked, a decision which

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<sup>4</sup> In Respondent’s January 16, 2012 Request for Hearing, he contends that he has a pending request before the New Mexico Medical Board to reopen his case and that this request “will be heard and ruled on by the Board within 60 days of the date of this letter.” [Respondent’s Request for Hearing at 2].

he is appealing, he is entitled to a hearing in this matter because there are “genuine issues of material fact” that will be introduced through expert testimony, records, and other documents that demonstrate “that given the totality of the facts and circumstances in the record, revoking his DEA COR registration would not be appropriate or justified.” [*Id.* at 3]. Additionally, the Respondent contends that he has over 40 years of experience in the medical field and “has never been the subject of any allegations that his medical practice is inconsistent with the public interest.” [*Id.*]. The Respondent also asserts that he has no conviction record and has always complied with federal and state laws relating to controlled substances. [*Id.* at 3-4]. Lastly, the Respondent asserts that the allegations in the Order to Show Cause are “in dispute and not accurate.” [*Id.* at 4]. Moreover, the Respondent argues that his expert witness will be able to prove that the Respondent’s practices were for a legitimate medical purpose and “within acceptable limits of the recognized standard of care in the field of pain management.” [*Id.*].

While the Respondent may have raised genuine disputes of fact concerning the allegations in the Government’s Order to Show Cause, those disputes are immaterial in light of the Respondent’s current lack of state registration. Indeed, the CSA and Agency precedent make clear that as a prerequisite to DEA registration the Respondent must have state authority to handle controlled substances, and that without such authority all other issues before this forum are moot. *See* 21 U.S.C. 802(21); 21 U.S.C. 823(f); Joseph Baumstarck, M.D., 74 FR at 17,527 (DEA 2009). Thus, because there is no dispute that the Respondent lacks state authority to practice medicine and handle controlled substances, the Respondent’s registration must be revoked.

Moreover, because there is no genuine dispute as to any material fact and substantial evidence shows that Respondent is presently without state authority to practice medicine and

handle controlled substances in New Mexico, summary disposition is warranted. It is well settled that when there is no question of material fact involved, there is no need for a plenary administrative hearing and that summary disposition is appropriate. See Layfe Robert Anthony, M.D., 67 FR 35,582 (DEA 2002); Michael G. Dolin, M.D., 65 FR 5,661 (DEA 2000); Jesus R. Juarez, M.D., 62 FR 14,945 (DEA 1997). Accordingly, both the plain language of the CSA and Agency interpretive precedent dictate that summary disposition is appropriate and the Respondent's DEA registration must be revoked because Respondent is without state authority to practice medicine and handle controlled substances.

**B. Respondent is Entitled to Reapply for Registration with the DEA.**

Any person who is required to register with the DEA may apply for registration at any time. 21 CFR 1301.13(a) (2012) ("Any person who is required and who is not registered may apply for registration at any time. No person required to be registered shall engage in any activity for which registration is required until the application for registration is granted and a Certificate of Registration is issued by the Administrator to such person").

The Respondent is permitted to reapply for a Certificate of Registration with the DEA at any time in the future. 21 CFR 1301.13(a). However, the Respondent will not be permitted to engage in activity for which a registration is required until his application is granted by the DEA.

Id.

**III. CONCLUSION, ORDER, AND RECOMMENDATION**

Consequently, there is no genuine dispute of material fact regarding the Respondent's lack of state authority to practice medicine and handle controlled substances. Thus, summary disposition for the Government is appropriate. It is well settled that when there is no question of material fact involved, there is no need for a plenary, administrative hearing. See Dolin, 65 FR



5,661. Here, there is no genuine dispute that the Respondent currently lacks state authority to practice medicine and to handle controlled substances in New Mexico.

Accordingly, I hereby

DENY the Respondent's Motion for a Stay; further I

GRANT the Government's Motion for Summary Disposition.

I also forward this case to the Deputy Administrator for final disposition. I recommend that the Respondent's DEA Certificate of Registration, Number BJ5128067, be revoked.<sup>5</sup>

Date: February 12, 2013

s/ Gail A. Randall  
Administrative Law Judge

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<sup>5</sup> The sole basis of my recommendation is the loss of Respondent's state licensure. I make no findings or conclusions concerning the other allegations asserted in the Order to Show Cause.